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Sent: 2/13/2013 7:50:49 AM
Subject: Scranton Times-Tribune (2-13) Hearing board judge lets Dimock water appeal continue

Hearing board judge lets Dimock water appeal continue

By Laura Legere

Feb 13, 2013 (Menafn - The Times-Tribune - McClatchy-Tribune Information Services via COMTEX) --A state Environmental Hearing Board judge has denied a natural gas drilling company's motion to throw out a recently reinstated appeal by two Dimock Twp. families who object to the state's remedy for their methane-tainted water supplies.

Judge Bernard A. Labuskes Jr. rejected Cabot Oil & Gas Corp.'s argument that the families had forfeited their right to appeal by accepting payments that the company had put into escrow accounts for them. The money had been set aside as part of a Department of Environmental Protection order that required the company to restore or replace 18 damaged water supplies.

The families have argued that the remedy outlined in the order -- payments tied to the value of their homes and a now-expired offer to install treatment systems -- is not sufficient to permanently replace their water wells and would not remove contaminants other than methane. Cabot denies that its operations affected the water supplies.

The two families, the Elys and Huberts, are the last of 12 that initially appealed the state's order with Cabot. The others withdrew their hearing board appeals after they settled a separate lawsuit they brought against the company in federal court.

The Ely and Hubert appeals were briefly withdrawn by their former attorneys without their consent in an "unauthorized --inaccurate, ineffective, and void" action Judge Labuskes said was made by "attorneys who no longer had [the families'] interests at heart."

In his ruling on Friday, Judge Labuskes upheld the reinstatement of the two families' appeals and found that their receipt of the escrow payments did not preclude them from continuing their case.

"So long as a party is aggrieved by a Departmental action, it may pursue an appeal, even if its receipt of some benefits make it less aggrieved than it otherwise might have been," he wrote.

He also pointed out that Cabot had committed "very clearly" to the board in the past that it would not take the position that the families waived their rights or any claims against the company, including their right to continue with the appeal, if they accepted the escrow funds.

"Somewhat remarkably," he wrote, Cabot "has now taken that very position."

In a separate motion filed last week, Cabot offered to install effective treatment systems at the homes if the board agreed to stay or dismiss the appeal and the families agreed to certain conditions, including not having access to the systems without a Cabot representative present and signing a confidentiality agreement that bars them from photographing the system, discussing it with the press or disclosing water sampling results until after the testing phase of the installation is over.

The families' attorneys have until Tuesday to file their response to Cabot's motion.

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